IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C. W.P. No. 3744 of 2007 (O&M)
Date of decision: 22.03.2007

State of Punjab .....*Petitioner*

Versus

Basant Singh and another .....*Respondents*

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BL MRS. JUSTICE NIRMAL YADAV

Present: Mrs. Nirmaljit Kaur, Additional Advocate General, Punjab
for the petitioner

JASBIR SINGH, J. (Oral)

C.M. No. 4620 of 2007

Application is allowed. Documents annexed with it , are taken on record.

C.W.P. No. 3744 of 2007

This writ petition has been filed with a prayer to quash the order dated 21.04.2005 (Annexure P-5), vide which, application filed by the petitioner-State, under Sections 4 and 5 of the Punjab Public Premises and (Eviction and Rent Recovery) Act, 1973 (in short 'the Act'), was dismissed. Further prayer is to quash the order dated 10.05.2006 (Annexure P-4), vide which, appeal filed by the petitioner was also dismissed.

It is apparent from the record that the petitioner, by claiming ownership over the land, in dispute, filed an application under Section 5 of the Act, for ejectment of respondent No.1 from the land, description of which was given in that application. By taking note of dismissal of earlier application, filed by the petitioner-State and also the fact that, as per the

admission made by the petitioner-State, respondent No. 1 was a tenant over the land, in dispute, application for ejectment was dismissed. In appeal, the petitioner-State also failed. The appellate Court, while dismissing the appeal, has observed, thus:-

> *"After perusing the record of the file and after going through the argument advanced by the land counsel of the parties. This Court comes to the conclusion that the Punjab State is owner of land measuring 37 Kanals 7 Marlas comprised in Rect. And Killa Nos. 45//16 (8-0) 24 (8-0), 25(8-0), 57//4/2 (2-0) 5(3-7) of Village Makhewala, Tehsil Sardulgarh District Mansa as per jamabandi 2002-2003 and earlier P.W.D. Department was shown as cultivator in column No. 5. It is important to mention here that earlier an application under Section 4,5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 was filed by the Sub Divisional Officer, Canal Department, Jhunir on dated 03.06.1994 before Collector Sub Divisional, Sardulgarh, which was decided in their favour on 24.05.1995, but the respondent No. 1 filed an appeal before Commissioner, Faridkot Division, Faridkot against this order in which the order was passed in the following terms:-*
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> > *"The jamabandi for the year 1987-88, placed on the lower court file, shows that the Punjab Government is the owner of the land, but no*

> *eviction application was filed by the Punjab Government against the applicant. Further as per the Punjab Government Notification No. 1122 FT 58/1197 dated 3.5.1958 all strips of Govt. waste land on either side of all roads, canals etc. stand transferred to Forest department as protected forests but the forest Department* has also not filed any eviction proceedings against the appellant. The canal Department has no concern with the land in question and as such they have no locus standi to file eviction application against the appellant."

Neither the department of Canal nor forest department filed any appeal before the higher Competent authority against the order which was decided in favour of respondent No.1, which should have been filed, but and application under Section 5 of the P.P.Act, 1973 was again filed before the Court of Collector Sub Division, Sardulgarh on 23.05.2002, which was accepted by them on 22.10.2002, which appeal was dismissed by the earlier Deputy Commissioner, vide its order dated 16.07.2003. The Forest Department instead of going to any higher authority against that order filed the application under Section 5 of PP Act, 1973 on dated 21.10.2004, which was dismissed by them on 21.04.2005. The application which was filed by the appellant before the Lower Court, that was

filed after concealing the true facts nor the truth regarding that appeal was mentioned in that application.

On the basis of above said facts and circumstances, the appeal of the appellant is dismissed and the order passed by the lower court is restored. Further, the appellant is instructed to initiate any other legal process before the other competent legal authority. The record of the Lower Court of Collector sub Division, Sardulgarh along with the copy of this order is sent to him. The file be consigned in the record room."

We feel that the impugned orders, are perfectly justified. It is not in dispute that prior to filing of the present application for ejectment, respondent No.1 had filed a suit before the Civil Court, claiming declaration to the effect that he was a tenant over the property, in dispute. In that suit, it was specifically admitted by the State officials that he (respondent No.1) was a tenant over that land, in view of that, it was ordered vide judgment and decree dated 28.01.1998, that his prayer for declaration has become infructuous. It is also apparent from the record that when earlier application was dismissed, no appeal was filed.

No case is made out for interference.

Dismissed.

(JASBIR SINGH)
JUDGE

(NIRMAL YADAV)
JUDGE

March 22, 2007
mohan